UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/564,065 | 06/22/2006 | Daniel Nilsson | 284135US2PCT | 3945 |

| | | |
|---|---|---|
| 22850          7590          05/29/2009 | | |

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

| EXAMINER |
|---|
| SMITH, CHENEA |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2421 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 05/29/2009 | ELECTRONIC |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated  "Notification Date" to the following e-mail  address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

PTOL-90A  (Rev. 04/07)

| *Advisory Action* *Before the Filing of an Appeal Brief* | Application No. | Applicant(s) |
|---|---|---|
| | 10/564,065 | NILSSON ET AL. |
| | Examiner | Art Unit |
| | CHENEA P. SMITH | 2421 |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED <u>08 May 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>4</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>12,14-16,18 and 20-23</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See notes below.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Hunter B. Lonsberry/
Primary Examiner, Art Unit 2421

In response to Applicants' addition of claim 23, and to the Applicants' arguments on page 10, line 17- page 11, line 4, and subsequent similar arguments that:

"However, Applicants respectfully submit that there is no teaching in the references to make this combination without using hindsight analysis based on the Applicants' disclosure. The MMS notification message of Mostafa is a message for notifying the availability of a streaming content. However, in Barde there is no description or suggestion to include streaming video data in any type of message which may be the equivalent of a MMS notification message which notifies the availability of a streaming content to a user. On the contrary, as described above, Barde describes a user first starting to stream the video data by selecting a video to be played, and then receiving a still image to be displayed while video data is initially buffered. Thus, the user in Barde may be notified of the availability of a video by a playlist or an interface shown in Figs. 3 or 11. However, Barde clearly describes that all buffering of data begins after the user actually selects the video for download, and thus after any notification of the availability of a video to a user has already been made, and after a user has started a streaming service (see for example, the time line of Fig. 7)",

the Examiner respectfully disagrees. Also, the Applicants should note that it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning.  But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.  See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).
 Mostofa's system includes a message that notifies a user that there is subsequent video to be viewed. The Examiner believes that the reception of the static image of Barde's system is equivalent to a notification of video content to come, as the static image comes first, and is first displayed to the user before the rest of the video is displayed or even received.
 Via the user interface in Barde, the user is already notified only of video available to be streamed. As multiple videos are listed in a playlist, nothing is being streamed to the user, and therefore the only actual notification of the video actually being streamed is the static image, i.e., the message, being displayed to the user.
 Furthermore, because the streaming of the actual video content is not started until after the static image, i.e., the message, of Barde's system is displayed, it is reasonably taught that buffer data, in this case the static image message, is sent to the terminal prior to the start of the actual streaming service.
 Because the modification of Mostafa's system to include the limitations as taught by Barde does not render the system inoperable or change the principle of operation of the system, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify Mostafa's system to include the limitations as taught by Barde for the advantage of implementing a quick starting video process by providing the illusion of continuous broadcast.